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HOUSE OF REPRESENTATIVES }

REPORT

No. 97-862

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PROVIDING FOR FEDERAL RECOGNITION OF THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS, TO INSTITUTE FOR SUCH TRIBE THOSE FEDERAL SERVICES PROVIDED TO INDIANS WHO ARE RECOGNIZED BY THE FEDERAL GOVERNMENT AND WHO RECEIVE SUCH SERVICES BECAUSE OF THE FEDERAL TRUST RESPONSIBILITY, AND FOR OTHER PURPOSES

SEPTEMBER 23, 1982.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 6588]

[Including cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6588) to provide for Federal recognition of the Cow Creek Band of Umpqua Tribe of Indians, to institute for such tribe those Federal services provided to Indians who are recognized by the Federal Government and who receive such services because of the Federal trust responsibility, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 6588, introduced by Mr. Weaver, is to extend Federal recognition to the Cow Creek Band of Umpqua Indians of Oregon.

BACKGROUND

The Cow Creek Band of the Umpqua Tribe of Indians were aboriginally located in the Umpqua Valley of southwestern Oregon. In the mid-nineteenth century, this area was the homeland of five different, linguistically distinct, Indian groups. These included the Lower Umpqua or Kalawatset located near the mouth of the Umpqua River; the Yoncalla, located along the midsection of the river; the "Umpqua" living near the confluence of the North and South forks

of the river; the Molalla located in the foothills and slopes of the Cascade Mountains in what is now Douglas County; and the Cow Creek Band of Umpqua, residing on the South Fork of the river.

During the 1850's, Federal agents negotiated five different treaties with the Indians in this watershed. The first of these, and one of the first Indian treaties ratified by the Senate with tribes from the Pacific Northwest, was that signed by the Cow Creek Band of Umpqua on September 19, 1853 (10 Stat. 1027).

The negotiation of this treaty was the result of the influx of white settlers into the Umpqua region beginning in 1846. By 1851, settlers had encroached on the lands of the Cow Creeks and, in 1852, hundreds of miners rushed into the area with the discovery of gold on various tributaries of the South Fork of the Umpqua River. A treaty securing the cession of the Cow Creek lands was deemed necessary and expedient to accommodate these settlements. Their lands were determined to be valuable and the government, though it had fixed the minimum price for all lands in Oregon Territory at \$1.25 per acre in 1850, agreed to pay the tribe an amount which resulted in a payment of two and one-third cents per acre for its homeland.

In the fall of 1855, the miner-settler population of the Rogue River Valley attacked and killed Indians camped near the Table Rock Reservation. This action sparked nine months of bitter warfare in southwestern Oregon which was known as the Rogue River War. During this war, the Cow Creek Indians left the reservation established for them and fled to the mountains of their old homeland as a sanctuary. Despite repeated attempts by the government to track down, kill, or capture them, the majority of the Cow Creek remained in hiding on their ancestral lands.

As late as August, 1856, eight months after an attempt to remove the Umpqua from the central valley of the Umpqua River to the Grand Ronde Reservation, an estimated one hundred Cow Creek Indians were yet in hiding in the hills. Despite reports to the contrary, available documents and testimony indicates that few of the Cow Creek members moved to the Grand Ronde Reservation. That documentation also indicates that the members of the Cow Creek Band have at all times, up to the present, resided in their traditional area in what is now southern Douglas County, Oregon.

EXPLANATION

H.R. 6588 provides that Federal recognition, with the attendant availability of Federal benefits and services made available to Indians because of their status as Indians, will be extended to the Cow Creek Band of Umpqua Indians. This is necessary because of the historical development of the relationship between the United States and this band of Indians which has resulted in the refusal of the Department of the Interior to acknowledge that they are a Federally-recognized tribe.

Although they have entered into a treaty with the United States, the relationship of the Cow Creek Band to the United States has been irregular and erratic. For a period of time in the 1850's, a definite relationship was maintained by the United States and the various Indian agents of that era dealt with the Cow Creek as it did with the

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other tribes and bands. After a hiatus in the relationship, it was renewed in 1910-17, when the Bureau of Indian Affairs created the Roseburg Agency in Douglas County which had jurisdiction over 8,000 off-reservation Indians in the area, including the Cow Creek.

In the early 1950's, Congress adopted and began to implement an Indian policy which became known as the Termination policy. Its goal was to terminate, as rapidly as possible, the special relationship between the United States and those Indian tribes deemed ready to assume control of their own affairs. At the direction of the Congress, the Bureau of Indian Affairs began to identify tribes they felt were ready for termination. They included among these tribes the many small, Federally-recognized tribes and bands of western Oregon. Even though they refused to acknowledge that the Cow Creek Band was a Federally-recognized tribe, out of an abundance of caution, the Bureau included the name of the Cow Creek Band in the legislation developed to terminate the small tribes of western Oregon. Termination of these small tribes and bands was accomplished by the Act of August 13, 1954, 68 Stat. 724.

The policy of termination proved disastrous for those tribes which experienced it. It has been effectively repudiated by the Congress as a sound Indian policy by several statutes passed by the Congress, beginning in 1973, restoring to Federal recognition many of the tribes which had been terminated. The Cow Creek, since they were told by the Bureau of Indian Affairs that they had never been Federally-recognized, did not seek restoration as other tribes have. They instead sought to achieve Federal recognition through the Federal Acknowledgement Project (FAP) established administratively by the Department of the Interior.

The FAP process does not purport to administratively extend Federal recognition to group of Indians as tribes. The authority to recognize groups of individuals as Indian tribes remains, under the plenary power of Congress over Indian affairs, a congressional prerogative. The FAP process is rather a valid administrative process established to review petitions from Indian groups and, if appropriate, to acknowledge that Federal recognition has in fact been extended to such group through other existing law. However, the rules and regulations promulgated by the Secretary for the FAP process rightfully precludes any tribe which has been specifically terminated from Federal recognition by Act of Congress from having a petition considered. It is to remove the Cow Creek Band from the horns of this dilemma, upon which it finds itself through no fault of their own, that H.R. 6588 was introduced. It would do this by simply exercising the plenary power of Congress over Indian affairs by extending Federal recognition to this band of Indians.

SECTION-BY-SECTION ANALYSIS

Section 1

Section 1 cites that Act as the "Cow Creek Band of Umpqua Tribe of Indians Recognition Act."

Section 2

Section 2 defines the terms "tribe" and "member" as used in the legislation.

Section 3

Subsection (a) extends Federal recognition to the Tribe and its members and makes them eligible to receive Federal services and benefits furnished to other Federally-recognized Indian tribes and people. Based upon the demographic data furnished to the Committee by the tribe, the Committee would expect that the counties of Douglas, Jackson, and Josephine would be considered as the service area for purposes of providing BIA and IHS services.

Subsection (b) provides that the provisions of the termination Act of August 13, 1954 will be inapplicable to the Cow Creek Band and its members and that any rights or privileges under Federal law which may have been diminished or lost thereby are restored.

Subsection (c) provides that the tribe and its members shall be eligible for Federal benefits and services made available to Federally-recognized tribes notwithstanding the absence of a reservation or the residence of its members on a reservation.

Subsection (d) provides that, unless specifically stated, nothing in this Act shall alter any existing right or obligation.

Section 4

Section 4 authorizes the tribe to organize and adopt appropriate governing documents and that such documents with any amendments thereto shall be filed with the Secretary of the Interior. It is the Committee intent that the tribe have the opportunity to organize under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), but there is no requirement that they do.

Section 5

Subsection (a) defines the membership of the tribe for the purposes of Federal recognition as including:

(1) all members of the tribe whose names presently appear on the tribal roll; and

(2) those who are direct lineal descendants of any person on the official tribal membership roll.

Subsection (b) provides that membership in the tribe pursuant to subsection (a) shall not entitle a person, not otherwise entitled, to participate in any distribution of funds derived from a judgment under the Act of May 26, 1980 (94 Stat. 372).

Section 6

Section 6 authorizes the Secretary of the Interior to adopt any rules or regulations necessary to effectuate the purpose of this Act.

COST AND BUDGET ACT COMPLIANCE

Some small, undeterminable cost would result from the enactment of this bill because it would make approximately 700 persons eligible for special Federal services and benefits made available to Indian and Indian tribes. The cost analysis prepared by the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 21, 1982.

HON. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMANS Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6588, the Cow Creek Band of Umpqua Tribe of Indians Recognition Act, as ordered reported by the House Committee on Interior and Insular Affairs, September 15, 1982.

This bill would grant federal recognition to a band of Indians identified by the bill. Although this bill does not specifically authorize the appropriation of funds, it does make members of the Cow Creek Band of Umpqua Indians eligible for all services and benefits available to federally recognized Indian tribes. Thus, while no additional expenditures are mandated by this bill, relevant federal agencies would be required to include members of the Cow Creek Band among those eligible for benefits and may seek additional funds in order to provide such benefits. The bill would make approximately 700 persons as well as their direct lineal descendants eligible for these programs.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATIONARY IMPACT STATEMENT

Enactment of H.R. 6588 would have no inflationary impact.

OVERSIGHT STATEMENT

No specific oversight activities were undertaken by the Committee and no recommendations were submitted to the Committee pursuant to rule X, clause 2(b)2.

COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs, by voice vote, recommends approval of the bill by the House of Representatives.

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